

The evidence establishes that in April 1995 claimant experienced an onset of low back and left leg pain while bending over a patient at work. She was treated with heat and medication. An EMG was positive for left radiculopathy. Claimant was released to return to work May 30, 1995. She continued to work for respondent and, it appears, performed her regular duties. She testified she continued to experience pain in her back and left leg, but did not seek additional medical treatment until January 1996.

In January 1996 claimant suffered an additional episode of low back pain when she stood up from a chair at home. On this occasion the pain radiated, for the first time, to her right leg. She also testified that her low back pain worsened.

The record includes reports from Dr. Dick Geis and Dr. Sergio Delgado. Dr. Geis, the treating physician, states in his report of April 24, 1996, ". . . [I]t is my impression that the patient's current symptoms are more likely due to her January 11, 1996 accident at home rather than a work injury." Dr. Delgado, on the other hand, states in his report that "her complaints are work related and should be covered under the Workman's Compensation claim and findings of April, 1995."

The Special Administrative Law Judge acknowledges at the conclusion of the hearing that these facts presented a close question. The Appeals Board agrees. However, the Appeals Board concludes the decision of the Special Administrative Law Judge should be reversed. The Appeals Board so finds for two reasons. First, the incident at work and the incident at home were comparable. At work she was bending over a patient and at home she was standing up from a chair. In both cases she experienced onset of low back and radiating pain. If one is to be considered an accidental injury so should the other. Second, it does appear that the history that Dr. Delgado had was not accurate in all details. His history indicated claimant was having problems and pain in her legs prior to January 1996, suggesting he thought her radiating pain was bilateral. In addition, his report does not mention a specific incident at home in January 1996. He only mentions that symptoms in her back and legs became significant in January 1996. Whether these additional details would be significant to Dr. Delgado's ultimate conclusion is undetermined at this point and would require speculation on our part. At this point the difference in the history does lessen the weight reasonably given to his opinion.

The Appeals Board notes that the decision by the Special Administrative Law Judge appears, in part, to be based on a conclusion that claimant was not fully treated for her original injury in April 1995. Claimant did not, however, request additional treatment until after the incident at home in January 1996. From this, it appears the need for treatment and the reason for the temporary total disability should be attributed to the January 1996 incident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Special Administrative Law Judge William F. Morrissey dated May 20, 1996, should be, and the same is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of July 1996.

BOARD MEMBER

c: George H. Pearson, Topeka, KS
Kip A. Kubin, Overland Park, KS
William F. Morrissey, Special Administrative Law Judge
Philip S. Harness, Director